

RECEIVED
CENTRAL FAX CENTER

JUN 23 2011

USPTO
RECEIPTS ACCOUNTING
DIVISION
Atty. Dkt. No. RDP001U
2011 JUN 24 PM 3:03
(4043528-0100)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Richard D. Pollak

Title: PROCESS FOR THE COLOR
ENHANCEMENT OF
GEMSTONES

Appl. No.: 09/803,218

Filing Date: 3/12/2001

Patent No.: 6,635,309

Issue Date: 10/21/2003

Examiner: PARKER, Frederick John

Art Unit: 1762

Confirmation 8538
Number:

CERTIFICATE OF FACSIMILE TRANSMISSION I hereby certify that this paper is being facsimile transmitted to the Commissioner for Patents, Alexandria, Virginia 22313-1450, on the date below. Mercedes F. Dipasupil (Printed Name) <i>Mercedes F. Dipasupil</i> (Signature) June 23, 2011 (Date of Deposit)
--

PETITION FOR SUSPENSION OF RULES UNDER 37 CFR § 1.183**REQUEST FOR RECONSIDERATION OF DECISION ON
PETITION UNDER 37 CFR § 1.378(e)****AND****PETITION TO ACCEPT AN UNINTENTIONALLY AND/OR
UNAVOIDABLY DELAYED PAYMENT OF A MAINTENANCE
FEE IN EXPIRED PATENT UNDER 37 CFR § 1.378(b)/(c)**

Mail Stop Petition
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450
Fax: (571) 273-8300

Sir:

Petitioner hereby requests suspension of the rules and reconsideration of the
Decision mailed on April 25, 2011 with respect to the petition originally filed on February 1,

DLMR_900600.1

-1-

USPTO
RECEIPTS ACCOUNTING
DIVISION
Atty. Dkt. No. RDP001U
(043528-0100)
2011 JUN 24 PM 3:03

2011 and renewed on April 6, 2011 to reinstate the above-identified patent under 37 C.F.R.

§ 1.378. Petitioner submits that, in view of the prior petitions and the following remarks, the patent in question should be reinstated.

A. **Petition For Suspension Of Rules And Petition For Acceptance Of Unintentionally Delayed Payment**

Pursuant to 37 C.F.R. § 1.183, “[i]n an extraordinary situation, when justice requires, any requirement of the regulations . . . which is not a requirement of the statutes may be suspended or waived” Petitioner respectfully requests that the requirement for filing a petition **within 24 months** after the six-month grace period expires to accept unintentionally delayed payment of a maintenance fee be suspended or waived in view of the extraordinary circumstances which the patentee has encountered.

More specifically, the patentee had every intention to maintain the patent, as evidenced by entry into an exclusive license agreement in 2006 (see the Declaration of Richard Pollak filed on April 6, 2011, ¶9) and by the agreement with the licensee for reimbursement of maintenance fees (*id.*, ¶10). When the patentee found out in 2009 that a maintenance fee was overdue, it was clearly patentee’s intention to pay the required fees and to reinstate the patent (*id.*, ¶¶12-14). But for the extraordinary circumstances which the patentee began to encounter as early as mid-2009, patentee would have attended to payment of the required fees before the expiration of the time period set forth in 37 C.F.R. § 1.378 (c).

Unfortunately, due to the extraordinary circumstances detailed below, the patentee was unable to timely file a petition under 37 C.F.R. §1.378(c) to accept an unintentionally delayed payment of maintenance fees. During 2009, the patentee suffered from memory loss related to his poor medical condition (including extremely high blood pressure) (*id.*, ¶14). **Prior to** the due date for submitting a petition under 37 C.F.R. §1.378(c) (i.e., October 21, 2007), the patentee had a blackout leading to an automobile accident on September 19, 2009, also resulting from his poor medical condition, including extremely high blood pressure (*id.*, ¶¶15-16). In the subsequent months, the patentee’s medical condition worsened as reflected by his suffering from a heart attack, and subsequently, undergoing two surgeries to alleviate the patentee’s medical

USPTO
RECEIPTS ACCOUNT
DIVISION
Atty. Dkt. No. RDP001U
2011 JUN 24 PM 3: 03 (943528-0100)

condition (*id.*, ¶¶17-20). From mid-2009, when the patentee began to experience significant medical crisis, it is submitted that the deadline of submission of a petition under 37 C.F.R. §1.378(c) should be tolled. Therefore, it is respectfully requested that the original petition filed on February 1, 2011 be deemed timely filed.

In view of the patentee's established clear intention to file a petition under 37 C.F.R. §1.378(c) to accept an unintentionally delayed payment of maintenance fees before the due date of October 21, 2007, and further in view of the extraordinary circumstances hindering timely submission of the petition prior to the due date, petitioner respectfully requests that the Director grant the petition for suspension of the rules and the renewed petition to accept an unintentionally delayed payment of maintenance fees. Clearly, it does not serve justice for the patentee to lose his right to the patent as a result of a life-threatening health issue and an automobile accident induced by his poor medical condition.

B. Petition For Acceptance Of Unintentionally And/Or Unavoidably Delayed Payment

Even if the Director, for any reason, does not grant the petition to suspend the petition period of 24 months to accept unintentionally delayed payment, petitioner respectfully submits that the entire delay of three and half years should be treated as two separate delays:

- (i) the delay during the first two years is unintentional, and
- (ii) the delay during the remaining period is unavoidable.

The unintentional delay during the first two years has been established in the foregoing section.

To establish an unavoidably delayed payment, 37 C.F.R. §1.378(b) mandates a showing of reasonable care taken toward timely payment of the maintenance fee and a showing of prompt action to achieve reinstatement upon awareness of the expiration of the patent.

Subsequent to the onset of his many health-related challenges, the patentee did not become aware of the lack of payment of the overdue maintenance fee until January 2011, and

USPTO
RECEIPTS ACCOUNTING
DIVISION
Atty. Dkt. No. RDP001U
(043528-0100)
2011 JUN 24 PM 3:03

immediately thereafter, the original petition was filed and the overdue fees paid on February 1, 2011. *Id.*, ¶22.

Reasonable care to ensure the payment of the maintenance fee cannot in all fairness be applied to patentee under the extraordinary circumstances described herein.

Granting of this petition is respectfully requested in light of the grounds set forth above. The required maintenance fee and surcharge, and petition fees are being paid by credit card. A credit card payment form is enclosed. However, if any additional fees are required, the Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

Respectfully submitted,

Date: 6/23/11

FOLEY & LARDNER LLP
Customer Number 30542
Telephone: 858-847-6711
Facsimile: 858-792-6773

By SEL

Stephen E. Reiter
Registration No. 31,192
Attorney for Applicant